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SERVICE DATE – JUNE 2, 2017

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1242

HARTWELL FIRST UNITED METHODIST CHURCH—ADVERSE ABANDONMENT AND
DISCONTINUANCE—THE GREAT WALTON RAILROAD COMPANY, INC.,
IN HART COUNTY, GA.

Digest:¹ This decision denies a petition for reconsideration of a fee waiver because the petitioner, as a third party, does not have a legal interest in whether another party's fee is waived.

Decided: May 30, 2017

On April 14, 2017, Hartwell First United Methodist Church (Hartwell First) filed an application under 49 U.S.C. § 10903 requesting that the Surface Transportation Board (Board) authorize the third-party, or adverse, abandonment and discontinuance of approximately 0.25 miles of rail line and associated right-of-way (the Line) owned by The Great Walton Railroad Company (GWRC) in Hartwell, Ga.² Notice of the application was served and published in the Federal Register on May 4, 2017 (82 Fed. Reg. 20,958).

Hartwell First requested a waiver of the filing fee for its application, see 49 C.F.R. § 1002.2(e), and the waiver was granted. On April 17, 2017, GWRC filed a petition for reconsideration of the waiver of Hartwell First's application fee. Hartwell First replied in opposition on May 2, 2017.

GWRC's petition for reconsideration will be denied. As the courts have recognized, there is no private right of action to enforce the Independent Offices Appropriations Act, 31 U.S.C. § 9701, which regulates fees collected by government agencies. See Byers v. Intuit,

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² Although this proceeding originally included Hartwell Railroad Company (HRC), the parties now agree that HRC has no interest in the Line. (See HRC Mot. to Dismiss, Apr. 18, 2017; Hartwell First Reply to Mot. to Dismiss 2-3, May 2, 2017.) Therefore, the proceeding has been recaptioned to remove HRC, and HRC's motion to be dismissed as a party will be granted.

Inc., 564 F. Supp. 2d 385, 414-19 (E.D. Pa. 2008). While the question previously was left unresolved,³ the Board now concludes that the grant or denial of a party's fee waiver request has no bearing on the merits of that party's underlying application and, therefore, has no effect on any third party that might oppose the initial party's application. Accordingly, as a third party, GWRC lacks any legal interest in and cannot challenge or appeal the Board's decision to waive the filing fee for Hartwell First's application.

It is ordered:

1. GWRC's petition for reconsideration is denied.
2. HRC's motion to be dismissed as a party is granted.
3. This decision is effective on its date of service.

By the Board, Board Members Begeman, Elliott, and Miller.

³ See Caddo Valley R.R.—Aban. Exemption—in Clark, Pike & Montgomery Ctys., Ark., AB 1076X, slip op. at 4 (STB served Feb. 27, 2013). The Board noted in that decision that it is unclear whether third parties have standing to challenge the fee waiver, but nonetheless addressed a third party's challenge to the issuance of a filing fee waiver, finding it was without merit.